

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7410

BENJAMIN A. GIBBS,

Petitioner - Appellant,

versus

STATE OF SOUTH CAROLINA; HENRY MCMASTER,
Attorney General of South Carolina,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Sol Blatt, Jr., Senior District Judge. (CA-03-2631-08)

Submitted: February 25, 2005

Decided: March 17, 2005

Before NIEMEYER and LUTTIG, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Benjamin A. Gibbs, Appellant Pro Se. Donald John Zelenka, Chief Deputy Attorney General, John William McIntosh, Assistant Attorney General, William Edgar Salter, III, Samuel Creighton Waters, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Benjamin A. Gibbs seeks to appeal the district court's order granting summary judgment to respondents on his 28 U.S.C. § 2254 (2000) petition. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's judgment denying § 2254 relief was entered on the docket on July 1, 2004. The notice of appeal was filed on August 23, 2004. See Houston v. Lack, 487 U.S. 266 (1988). Because Gibbs failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. Gibbs' motion to proceed on appeal in forma pauperis is denied. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED